

CONDITIONS OF PURCHASE

A. DEFINITIONS

- (1) An Post is hereinafter termed "*An Post*". The person, firm or company supplying the goods or services is hereinafter termed the "*Contractor*".

B. APPLICABILITY

- (1) Save where An Post has executed a specific contract with the Contractor for supply of goods or services, in which case such contract shall supersede these Conditions of Purchase, these Conditions of Purchase shall govern every contract for supply of goods and/or services between An Post and the Contractor (the "**Order**"). All Orders are placed and executed on the understanding that the Contractor is bound by these Conditions of Purchase. Any goods and/or services shall be supplied pursuant to these Conditions of Purchase only, to the total exclusion of any terms and conditions of the Contractor. No quotation or standard terms of business or supply, in any confirmation dockets, invoice, purchase order or other similar document issued by or on behalf of the Contractor shall vary these Conditions of Purchase or be binding upon the parties.

C. PRICES

- (1) The price payable shall, unless otherwise stated, be the price set out at the date of placing the Order. Prices shall not be subject to variation except with the written consent of An Post, An Post reserves the right to cancel the Order either in whole or in part in the event of any increase in the price between the date of placing the Order and the date of delivery.
- (2) Unless otherwise stated in the Order, payment will be made within thirty (30) days of receipt of a valid VAT invoice supported by such information as An Post may require (the "**Payment Date**"). All invoices must be sent to the Creditors Section in hard copy. For the purposes of these Conditions of Purchase, a "Business Day" shall be any day (not being a Saturday, Sunday, bank holiday or public holiday) on which banks are generally open for business in Dublin. In the event that amounts due and owing are not discharged by the Payment Date interest shall be payable in accordance with the European Communities (Late Payment in Commercial Transactions) Regulations 2012 in respect of such late payment.
- (3) All payments to be made by An Post under these Conditions of Purchase are stated on a gross basis but An Post may make any deduction or withholding on account of tax as is required by Law or as required by the practice of the Revenue Commissioners or as An Post is entitled under these Conditions of Purchase. For the avoidance of doubt, An Post may also make any deduction or withholding on account of tax which does not arise under the requirements of any Law or practice of the Revenue Commissioners at the Commencement Date but which may arise at any future date under any change in Law or practice of the Revenue Commissioners of Ireland, including any change in Law or practice. The Contractor shall accept the net amount paid after deduction or withholding in discharge of An Post's liability to the same extent as if the deduction or withholding had not been made.
- (4) Without prejudice to the generality of the foregoing, An Post may make any deduction or withholding required under Chapter 1 of Part 18 of the Taxes Consolidation Act 1997 (Payments in respect of professional services by certain persons) and regulations made thereunder.

D. DELIVERY AND PACKAGING

- (1) The Contractor, at his own risk and expense, shall deliver the goods properly packed, secured and marked with the applicable order number, or the services (as the case may be), to the location specified in that Order, or any alternative subsequently agreed. Each package should be clearly marked with the Contractor's name and the delivery address specified.
- (2) The giving of a receipt by an employee of An Post or by an employee or agent or the consignee or Company to any railway company, shipment agent, carrier or other person or company whomsoever, shall be proof only of actual delivery and not of delivery in good condition and quantity specified.
- (3) The risk in the goods will remain with the Contractor until the goods are delivered to and are accepted by An Post. Title to the goods will pass to An Post on delivery, or upon payment if earlier. Passing of title is without prejudice to any right of rejection of the goods which may accrue to An Post hereunder. Shortages, breakages or other damage or loss to any consignment from any cause whatsoever prior to delivery to consignee shall not be paid for by the purchaser, all risks and insurance being borne by the Contractor.
- (4) The time of delivery stated in the Order is binding upon the Contractor unless otherwise agreed to in writing by An Post. The Contractor shall perform and complete all services within the time scales set out in the applicable Order (or statement of work if applicable), or within such other time scales as may be agreed from time to time in writing between An Post and the Contractor. In the case of late delivery, performance or completion, An Post reserves the right to charge the Contractor 2% of the

total value of the Order for every week of delay as liquidated damage, and not as a penalty.

- (5) An Post will not undertake to return any packages, cases or other packing materials, and no payment will be made by the purchaser in respect thereof. Exceptions to this clause must be clearly stated in writing and agreed to in writing by An Post.

E. QUALITY

- (1) Goods supplied shall be in all respects in accordance with any samples provided by the Contractor and/or the specification of An Post, and shall be of the best available design, of the best quality and workmanship and shall be without fault. Any article found to be inferior in quality, or in any manner defective, will be rejected. Acceptance of delivery shall not preclude An Post from exercising this right.
- (2) If within twelve months after delivery of the goods (hereinafter called the "*guarantee period*") An Post gives notice in writing to the Contractor of any defect in the goods which shall arise under proper use or of any non-conformity with this contract then the Contractor shall with all possible speed repair or if An Post requests, replace the goods so as to remedy the defects without costs to An Post.
- (3) If a substantial proportion of the goods are defective, or do not conform as aforesaid, An Post may, without prejudice to any other rights and remedies, reserve the right to cancel the Order and reject any or all goods already delivered, and the Contractor shall thereupon repay to An Post any sums already paid in respect of goods so rejected or not then delivered. Rejected goods will be returned at the Contractor's risk and expense.
- (4) The Contractor shall with all possible speed repair or replace, free of charge, goods damaged or lost in transit provided that An Post shall give the Contractor written notification of such damage or loss within a reasonable time.
- (5) The Contractor guarantees the availability of such spares which are proprietary in his equipment for a period of at least 10 years. Should any equipment become obsolescent during this time the Contractor shall give An Post 60 Business Days' notice in writing in advance of any such obsolescence and shall supply such spares as An Post shall consider advisable to maintain equipment.
- (6) An Post reserves the right to inspect any goods before dispatch from the Contractor's premises, but such inspection shall not relieve the Contractor from responsibility or liability nor be interpreted in any way to imply acceptance of such goods. Goods must be to the entire satisfaction and approval of An Post's Inspector when examined at time of delivery or subsequent thereto of its address for delivery as stated in this Order.
- (7) Where it is specified that a sample is to be submitted with a tender, such sample shall, in the event of the tender being accepted and unless otherwise agreed, be taken as the standard by which the supply in bulk shall be governed.
- (8) The Contractor hereby represents, warrants and undertakes that the services shall be supplied in a good and workmanlike manner with all reasonable skill, care, judgement and diligence by personnel sufficiently experienced, competent, qualified and trained to carry out the services.

F. HEALTH, SAFETY & ENVIRONMENT

- (1) It is a condition precedent to any tendering process that all goods, equipment, services and the like, supplied to An Post, comply with all applicable regulatory and statutory requirements, Irish/EU Standards (whichever is the higher) and any certification where applicable. The goods, equipment, services and the like must be fit for the purpose required. All goods must be supplied with manufacturer's instructions, material safety data sheets, safety instructions, etc., as required. All relevant documentation must be forwarded to An Post before purchase.
- (2) The Contractor shall comply with all An Post's safety policies and instructions.
- (3) The Contractor shall comply with all applicable laws for the protection of the environment and human health and safety and the carriage of goods. For these purposes, "all applicable laws" shall include EU Regulations on the carriage of goods and all laws (whether criminal, civil or administrative) including common law, statutes, statutory instruments as defined in the Interpretation Act 2005, directives, codes, judgements and other legal measures having the force of law in Ireland and in whichever relevant jurisdiction goods are transferred for the purposes of this contract by or on behalf of the consultant or An Post. These include but are not limited to the Public Health (Ireland) Act, 1878, the Air Pollution Act, 1987, the Dangerous Substance Acts, 1972 and 1979, the Litter Pollution Acts, 1997 to 2003, the Safety, Health and Welfare at Work Act, 2005, the Safety in Industry Act, 1980, the Factories Act, 1955, the Planning & Development Acts 2000 to 2015, the Environmental Protection Agency Acts, 1992-2015,

the Waste Management Acts 1996 to 2015, the European Communities Acts, 1972 to 2012, the Protection of the Environment Act, 2003, the Wildlife Acts 1976-2000, the European Communities (Birds and Habitats) Regulations 2011 and the Chemicals Acts 2008 to 2010 and any amendments to any of the aforesaid legislation, and all regulations, by-laws, orders, decisions and codes made thereunder.

- (4) The Contractor shall endeavour to introduce environmentally friendly products and processes, to include areas such as disposal, use of full life cycle products, and consideration of environmentally friendly alternatives.
- (5) The Contractor shall behave ethically and shall endeavour to contribute to economic development while improving the quality of life of its workforce and their families as well as of the local community and society at large.
- (6) The Contractor agrees that it shall, when requested by An Post submit full personal details of its personnel to An Post (the "**Personnel**"). The Contractor acknowledges that Personnel may be required to submit to garda vetting and that Personnel may be refused admission to a Site as a result of failure to submit to such garda vetting or in circumstances where the results of such garda vetting indicate that admission to An Post's site of such Personnel may in the reasonably held opinion of An Post compromise the safety or security of An Post. An Post reserves the right (in addition to any other rights or remedies which it may have under these Conditions of Purchase or otherwise at law) to terminate the Order or these Conditions of Purchase with immediate effect and without liability in the event that it believes that the continued provision of the Services by Personnel may compromise the safety or security of An Post.

G. **CONFIDENTIALITY**

In providing the goods and/or performing the services, the Contractor may be exposed to confidential information and materials of An Post. This document and all information disclosed about An Post and its businesses are given to the Contractor in confidence. The Contractor, its subcontractors and all other persons involved shall retain in confidence and shall not copy or disclose to any third party, without An Post's written approval, any information obtained from An Post or deduced from information obtained from An Post. The Contractor shall assume responsibility for ensuring the confidentiality of information disclosed to a subcontractor.

H. **DATA PROTECTION**

- (1) The terms "**Data Controller**", "**Data Consultant**", "**Data Subject**", "**Personal Data**" and "**Processing**" shall have the same meanings as in the Data Protection Legislation and "**Processed**" and "**Process**" shall be construed in accordance with the definition of "**Processing**". The categories of Personal Data that shall be subject to terms of this Clause H shall consist of such Personal Data (including sensitive personal data (or "special categories" of personal data) disclosed by An Post to the Contractor from time to time with respect to its employees; contractors, customers; or which is otherwise received by the Contractor in the course of providing Services and such Personal Data shall be limited to what is necessary in order for the Contractor to perform the Services in question. The purposes of such Processing shall be solely for the provision of the Services or per An Post instructions from time to time.
- (2) The Contractor acknowledges that in performing its obligations under this Agreement, the Contractor may process Personal Data received from An Post within the meaning of the Data Protection Legislation. In such circumstances, the Contractor shall:
 - (i) process the Personal Data at all times in accordance with its obligations as a data processor under Data Protection Legislation and solely for the provision of the Services and in accordance with the documented instructions of An Post and for no other purpose or in any manner except with the prior written consent of An Post;
 - (ii) implement appropriate technical and organizational measures in accordance with the requirements of Data Protection Legislation to safeguard the Personal Data from unauthorised or unlawful Processing or accidental loss, destruction or damage having due regard for the nature of the Personal Data concerned, the level of access to such Personal Data, the nature, scope, context and purposes of the Processing, provided always that such measures shall ensure a level of security appropriate to the risks to the rights and freedoms of Data Subjects that might result from unauthorised or unlawful Processing or accidental loss, destruction or damage to the Personal Data;
 - (iii) ensure that each of its employees, agents and subcontractors are made aware of and are trained in, the obligations under this Agreement with regard to the security, handling and protection of the Personal Data and shall require that they have committed themselves to confidentiality obligations with the Contractor in order to maintain the levels of security and protection provided for in this Clause H;
 - (iv) subject to Clause H.2(vi), in the event the Contractor receives any complaint, notice or communication which relates directly or indirectly to the Processing of the Personal Data or to either party's compliance with Data Protection Legislation, notify An Post and, in so far as the complaint,

notice or communication relates to the Contractor's obligations hereunder, provide An Post with full co-operation and assistance in relation to any such complaint, notice or communication;

(v) in the event of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, the Personal Data, promptly upon becoming aware of such breach, report the incident to An Post and shall cooperate with An Post's incident investigation requirements and the Parties acknowledge and agree that it is An Post's responsibility to ensure that the incident is reported in accordance with the procedures required by the Competent Authority and Data Protection Legislation;

(vi) in the event of the exercise by Data Subjects of any of their rights under Data Protection Legislation in relation to the Personal Data, inform An Post as soon as possible, and the Contractor further agrees to assist An Post with all such Data Subject requests where practicable having regard to the nature of the Services and the information available to the Contractor;

(vii) not Process or transfer the Personal Data outside of the European Economic Area except with the express prior written consent of An Post;

(viii) not authorise a third party Representative (a "**Sub-processor**") to Process the Personal Data being processed for or on behalf of An Post without the prior written consent of An Post and provided that:

(a) the Sub-processor's contract is on terms which are substantially the same as those set out in this Clause H;

(b) the Sub-processor will be subject to the same obligations as those which the Contractor is subject to under this Clause H; and

(c) the Sub-processor's contract insofar as it relates to the Services or any part thereof terminates automatically on termination of the Agreement for any reason.

(ix) subject to An Post giving the Contractor reasonable notice (except where an urgent audit or inspection is required to investigate a breach or suspected breach or where required by the Competent Authority), the Contractor agrees to allow for and contribute to audits, including inspections of its data processing facilities, by An Post, or an auditor appointed by An Post, in order for Company to verify the Contractor's compliance with its obligations under this Clause H;

(x) cease Processing the Personal Data immediately upon the termination or expiry of the Agreement or, if sooner, the Services to which it relates and as soon as possible thereafter, at An Post's option and request, either return, or delete from its systems, the Personal Data and any copies of it or of the information it contains and the Contractor shall confirm in writing that this sub-clause has been complied with in full. The provisions of this sub-clause shall not apply to the extent the Contractor is obliged by applicable law in force in Ireland or in the European Union to keep copies of the Personal Data.

(3) Where the Contractor appoints or otherwise uses the services of a Sub-processor, the Contractor shall be fully liable to An Post for the performance, acts and omissions of such Sub-processor. Nothing in this Clause H shall relieve the Contractor of any liability for the acts or omissions of its staff, employees or contractors in relation to the Personal Data.

(4) The Contractor shall immediately notify An Post of any breach of its obligations under this Clause H and shall indemnify, keep indemnified and hold harmless An Post for all costs, losses, claims, damages, expenses or proceedings incurred or suffered by it as a result of a breach of this Clause.

I. **INSURANCE**

The Contractor shall:

maintain appropriate insurance with a reputable and duly licensed insurance company against all potential liabilities to An Post under these Conditions of Purchase and shall note An Post's interest as a co-insured on any relevant policies of insurance; and

as a minimum, maintain the following insurances to cover potential liabilities which the Contractor or any of its subcontractors may incur under these Conditions of Purchase, including without limitation the following insurances:

(i) Employers Liability insurance with a limit of not less than thirteen million euro (EUR13,000,000) for any one claim or series of occurrences;

(ii) Public and Products Liability insurance with a limit of not less than six million five hundred thousand euro (EUR6,500,000) for any one claim or series of occurrences;

(iii) Errors and Omissions and professional indemnity insurance covering against liability for claims, damages, losses and expenses with a limit of not less than two million and six hundred thousand euro (EUR2,600,000) for any one claim or series of occurrences;

If requested by An Post at any time to do so, the Contractor will produce such evidence of the insurance policies which it holds, as An Post may reasonably require. The Contractor will also provide information if requested to do so on limits, renewal dates, coverage extensions and exclusions for any of the policies.

The Contractor will notify An Post in writing forthwith if the terms of any of the policies are changes in any way that adversely affects An Post's interests.

The minimum amounts of insurance to be maintained by the Contractor in accordance with this Clause I shall not be construed in any way as a limit of liability of the Contractor or as constituting acceptance by An Post of responsibility for financial liabilities in excess of that amount.

J. INTELLECTUAL PROPERTY

- (1) In consideration of the payment by An Post to the Contractor of €1.00 (one euro) (the sufficiency of which the Contractor hereby acknowledges), the Contractor hereby grants An Post, its successors and assigns, a non-exclusive, perpetual, royalty-free licence to use all intellectual property related to the services supplied by the Contractor to An Post and the Contractor hereby irrevocably assigns to An Post, its successors and assigns, on an exclusive and worldwide basis, all right, title and interest in, including all copyright, patents and other proprietary rights in, and intellectual property made, originated or developed during the course of otherwise related to the services which the Contractor or any of the Contractor's staff or agents made, makes, conceived or conceives (either solely or jointly with others and either on or off An Post's premises) in connection with these Conditions of Purchase (the "**Company Materials**"). An Post Materials shall be the exclusive property of An Post and may not be used by the Contractor or any Contractor staff or agent for any purpose except for the benefit of An Post.
- (2) The Contractor hereby represents, warrants and undertakes that it is the owner or licensee of the goods or services (as the case may be), that it has all rights, licences and consents legally required to provide the goods or services to An Post and/or to assign the intellectual property in An Post Materials to An Post as set forth in these Conditions of Purchase and that An Post's receipt and use of the goods and/or services (as the case may be) does not and will not infringe any intellectual property rights of any third party.

K. INDEMNITY

The Contractor agrees to indemnify and to keep indemnified An Post and hold An Post harmless from and against all loss, liabilities, damages and expenses (including reasonable legal fees) arising out of or in connection with the Contractor's negligence, default or breach of these Conditions of Purchase or of any order, including any act or omission of its personnel or sub-contractors. This Clause K shall survive termination of the Order and these Conditions of Purchase.

L. TERMINATION

- (1) Without prejudice to its other rights, An Post reserves the right (i) to cancel any Order for any reason at any time prior to delivery on giving the Contractor 5 Business Days' notice in writing; and (ii) to terminate the Order and these Conditions of Purchase without cause entirely at An Post's convenience and discretion. Save in the event of breach by the Contractor, An Post will pay a reasonable price for all work in progress at the date of the cancellation notice, to the extent only that such work in progress cannot reasonably be used by the Contractor in respect of its other customers. An Post shall not be liable for any other direct or indirect costs, damages or expenses of the Contractor arising from such cancellation.
- (2) The Order and these Conditions of Purchase may be terminated:
 - (i) forthwith if either party commits a material breach of these Conditions of Purchase and which in the case of a breach capable of being remedied shall not have been remedied within 15 Business Days of written notice to remedy same;
 - (ii) forthwith by notice in writing to the other party, if that other party is unable to pay its debts as they fall due within the meaning of Sections 569 and 570 of the Companies Act, 2014 or enters into compulsory or voluntary liquidation (other than for the purpose of a bona fide reconstruction or amalgamation), or compounds with or convenes a meeting of its creditors for the purposes of Section 587 of the Companies Act, 2014, or has a receiver or manager, or administrative receiver or an administrator or examiner appointed over its assets, or ceases for any reason to carry on business, or takes or suffers any similar action which in the opinion of the party giving notice, means that the other party may be unable to pay its debts as they fall due;
 - (iii) by An Post if the Contractor suffers a force majeure event which persists for 4 consecutive weeks;
 - (iv) by An Post if the Contractor commits a breach of Clause G (Confidentiality), Clause H (Data Protection) or Clause J(Intellectual Property).

- (3) Termination shall be without prejudice to any other rights or remedies a party may be entitled to under these Conditions of Purchase or at law and shall not affect any accrued rights or liabilities of either party.

- (4) All provisions of these Conditions of Purchase which in order to give effect to their meaning need to survive its termination shall remain in full force and effect thereafter.

M. GENERAL

- (1) Patented articles supplied shall be marked in accordance with the provision of the Patents Act, 1992. Without prejudice to An Post's other rights, the Contractor agrees to indemnify and to keep indemnified An Post and hold An Post harmless from and against all loss, liabilities, damages and expenses (including reasonable legal fees) arising out of or in connection with any action, claim or demand for alleged or actual infringement of any patent, copyright, design right, trade mark, name or other intellectual property right in respect of any goods or services supplied under these Conditions of Purchase, or for royalty or damages in respect thereof.

- (2) It shall be a condition of these Conditions of Purchase that the Contractor shall produce, as appropriate, either a valid C2 Tax Certificate, a Tax Clearance Certificate or, in the case of Contractor's resident outside the state, a statement from the Revenue Commissioners as to their suitability for appointment on tax grounds.

- (3) The Contractor shall not offer any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of any purchase order with An Post. Any breach of this consideration will render the Contractor liable to the cancellation of this and any other Order with An Post and entitle An Post to recover from the Contractor the amount of any loss resulting from such cancellation.

- (4) Subject to these Conditions of Purchase, the provisions of the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980 shall apply.

- (5) An Post accepts no liability whatsoever for goods, supplies or services not ordered on the official order form and invoices for such supplies or services not officially ordered will not be honoured.

- (6) The Contractor shall not subcontract its rights or obligations under these Conditions of Purchase without the prior written consent of An Post.

- (7) Nothing in these Conditions of Purchase shall constitute or be deemed to constitute that the Contractor is an employee or agent of An Post or a partnership or joint venture between An Post and the Contractor for any purpose whatsoever.

- (8) If any provision of these Conditions of Purchase is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, all other terms of these Conditions of Purchase shall remain in full force and effect.

- (9) These Conditions of Purchase constitute the entire agreement between the parties and supersede all previous agreements, promises, proposals, representations, understandings and negotiations, whether written or oral, between the parties.

- (10) The parties shall do their utmost to resolve any dispute or controversy with respect to the interpretation or application of any provision of these Conditions of Purchase in an amicable, timely and efficient manner for the purposes of seeking a just and equitable solution. Proposals and information exchanged during informal dispute resolution proceedings will be privileged, confidential and without prejudice to a party's legal position in any formal proceedings.

- (11) Any dispute or difference arising out of or in connection with this these Conditions of Purchase shall be determined by the appointment of an independent mediator to be agreed between the parties, or failing agreement within ten (10) Business Days, such dispute may then be referred to arbitration in accordance with the Arbitration Rules of the Chartered Institute of Arbitrators – Irish Branch. The place of arbitration shall be Dublin, Ireland and the language shall be English. The parties shall bear their own costs in relation to the resolution of any dispute arising under these Conditions of Purchase.

- (12) These Conditions of Purchase are governed by and shall be construed in accordance with Irish law and the parties irrevocably submit to the exclusive jurisdiction of the courts of Ireland.